

ORIGINAL  
OPEN MEETING



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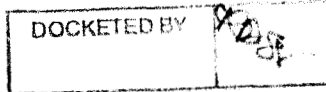
MEMORANDUM RECEIVED

TO: THE COMMISSION DOCKETED  
FROM: Utilities Division DEC 23 2010  
DATE: December 23, 2010  
RE: IN THE MATTER OF THE APPLICATION OF FIRST CHOICE TECHNOLOGY, INC. AND NETLOJIX TELECOM, INC. FOR APPROVAL OF AN ASSET PURCHASE AGREEMENT (DOCKET NOS. T-20400A-08-0568 AND T-03807A-08-0568)

Arizona Corporation Commission

2010 DEC 23 P 1:32

AZ CORP COMMISSION  
DOCKET CONTROL



On November 6, 2008, First Choice Technology, Inc. ("First Choice:") and NetLojix Telecom, Inc. ("NetLojix") (together "Applicants") filed an Application for approval of an Asset Purchase Agreement, whereby First Choice will acquire NetLojix's residential and business long distance customer accounts in Arizona. The Applicants also requested that NetLojix's Certificate of Convenience and Necessity ("CC&N") be cancelled upon consummation of the transaction.

On November 14, 2008, Staff issued its First Set of Data Requests to the Applicants. On September 27, 2010, Staff received responses to its First Set of Data Requests via email from Becky Heggelund at the law firm of Nowalsky, Bronston & Gothard. On September 29, 2010, the Applicants filed a request for a waiver of the Arizona Administrative Code ("A.A.C.") R14-2-1107(B) customer notice requirement relative to NetLojix's discontinuance of service. Additional confirmation provided to Staff on December 1, 2010, by Ms. Heggelund indicates that the closing date of the Asset Purchase Agreement was June 9, 2009, in the states that regulatory approval had been received. In a few states, including Arizona, First Choice has been operating under a management agreement until such time as the approvals are obtained.

**Background**

First Choice was granted a CC&N to provide resold long distance telecommunications services in Arizona on May 16, 2008, in Decision No. 70345. First Choice currently provides resold long distance services to customers in Arizona.

NetLojix was granted a CC&N to provide resold long distance telecommunications services in Arizona on June 9, 2000, in Decision No. 62629. Currently, NetLojix serves no customers in the State of Arizona.

**Staff's Analysis**

As indicated in the Application, First Choice will acquire substantially all of NetLojix's residential and business long distance customer accounts. At the time the Application was filed, NetLojix had one business customer. As indicated in the responses to Staff's Data Request, this one customer was provided a written notice of the proposed transaction by NetLojix on November 6, 2008. That customer no longer obtains service from NetLojix. NetLojix did not require deposits or advanced payments from its customers.

The Applicants have indicated that NetLojix's technical, managerial, and financial personnel will assist with the transaction and integration of the acquired assets. In response to Staff's First Set of Data Requests, the Applicants stated that NetLojix is discontinuing its provision of telecommunications service nationwide. In addition, the Applicants indicated that neither company has employees, plant or facilities in Arizona.

The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions filed against NetLojix or First Choice through December 1, 2010. Consumer Services also reports that, according to the Corporations Division, First Choice is in good standing with the Corporations Division of the Commission while NetLojix is not in good standing. NetLojix's authority to do business in Arizona was revoked on April 14, 2010, for failure to file the Corporations Division 2009 and 2010 Annual Reports. According to the Compliance Section of the Utilities Division, there are no outstanding compliance items or issues that need to be addressed by NetLojix or First Choice.

The Applicants filed a request for a waiver of A.A.C. R14-2-1107(B) relative to publication of a legal notice based on the facts that there are no retail customers to notify in Arizona, NetLojix has no employees in Arizona, and no residents or businesses in any county of Arizona will be affected as a result of the transaction. Staff believes, under the circumstances mentioned above, that the notice requirements of A.A.C. R14-2-1107(B) should be waived.

Since there are other carriers, including AT&T and MCI (now Verizon), in Arizona offering similar services as NetLojix, Staff believes that NetLojix's request to cancel its authority to provide resold long distance telecommunications service is in the public interest. Because NetLojix has no customers and has no authority to conduct business in Arizona, Staff believes the Commission should cancel NetLojix's CC&N to provide resold telecommunications services in Arizona.

In accordance with A.A.C. R14-2-802, the Affiliated Interest Rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission. In response to Staff's First Set of Data Requests, the Applicants provided confirmation that neither First Choice nor NetLojix are Class A investor-owned utilities. Therefore, since the Applicants do not meet the definition of Class A investor-owned utilities, the Affiliated Interest Rules do not apply to this transaction.

**IV. Recommendations**

Since NetLojix has no customers and lacks authority to conduct business in Arizona, Staff recommends that the Commission approve the Asset Purchase Agreement between NetLojix and First Choice. Staff further recommends approval of the Applicants' request to cancel NetLojix's CC&N to provide resold interexchange services in Arizona, effective upon a decision in this matter. In addition, Staff recommends the cancellation of NetLojix's tariff that is currently on file with the Commission. Upon cancellation of its CC&N, NetLojix will no longer be authorized to provide resold interexchange telecommunications services in Arizona and therefore, will no longer be subject to the requirements of Decision No. 62629.



Steven M. Olea  
Director  
Utilities Division

SMO:PJG:lhM\MAS

ORIGINATOR: Pamela Genung

1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2   KRISTIN K. MAYES  
3       Chairman

4   GARY PIERCE  
5       Commissioner

6   PAUL NEWMAN  
7       Commissioner

8   SANDRA D. KENNEDY  
9       Commissioner

10   BOB STUMP  
11       Commissioner

12   IN THE MATTER OF THE APPLICATION    )   DOCKET NOS. T-20400A-08-0568  
13   OF FIRST CHOICE TECHNOLOGY, INC.    )                   T-03807A-08-0568

14   AND NETLOJIX TELECOM, INC. FOR       )  
15   APPROVAL OF AN ASSET PURCHASE       )  
16   AGREEMENT                               )   DECISION NO. \_\_\_\_\_

17    )  
18    )   ORDER

19   Open Meeting  
20   January 11 and 12, 2011  
21   Phoenix, Arizona

22   BY THE COMMISSION:

23    FINDINGS OF FACT

24           1.     On November 6, 2008, First Choice Technology, Inc. ("First Choice:") and  
25   NetLojix Telecom, Inc. ("NetLojix") (together "Applicants") filed an Application for approval of  
26   an Asset Purchase Agreement, whereby First Choice will acquire NetLojix's residential and  
27   business long distance customer accounts in Arizona. The Applicants also requested that  
28   NetLojix's Certificate of Convenience and Necessity ("CC&N") be cancelled upon consummation  
29   of the transaction.

30           2.     On November 14, 2008, Staff issued its First Set of Data Requests to the  
31   Applicants. On September 27, 2010, Staff received responses to its First Set of Data Requests via  
32   email from Becky Heggelund at the law firm of Nowalsky, Bronston & Gothard. On September  
33   29, 2010, the Applicants filed a request for a waiver of the Arizona Administrative Code  
34   ("A.A.C.") R14-2-1107(B) customer notice requirement relative to NetLojix's discontinuance of  
35   service. Additional confirmation provided to Staff on December 1, 2010, by Ms. Heggelund

1 indicates that the closing date of the Asset Purchase Agreement was June 9, 2009, in the states that  
2 regulatory approval had been received. In a few states, including Arizona, First Choice has been  
3 operating under a management agreement until such time as the approvals are obtained.

4 3. First Choice was granted a CC&N to provide resold long distance  
5 telecommunications services in Arizona on May 16, 2008, in Decision No. 70345. First Choice  
6 currently provides resold long distance services to customers in Arizona.

7 4. NetLojix was granted a CC&N to provide resold long distance telecommunications  
8 services in Arizona on June 9, 2000, in Decision No. 62629. Currently, NetLojix serves no  
9 customers in the State of Arizona.

10 5. As indicated in the Application, First Choice will acquire substantially all of  
11 NetLojix's residential and business long distance customer accounts. At the time the Application  
12 was filed, NetLojix had one business customer. As indicated in the responses to Staff's Data  
13 Request, this one customer was provided a written notice of the proposed transaction by NetLojix  
14 on November 6, 2008. That customer no longer obtains service from NetLojix. NetLojix did not  
15 require deposits or advanced payments from its customers.

16 6. The Applicants have indicated that NetLojix's technical, managerial, and financial  
17 personnel will assist with the transaction and integration of the acquired assets. In response to  
18 Staff's First Set of Data Requests, the Applicants stated that NetLojix is discontinuing its provision  
19 of telecommunications service nationwide. In addition, the Applicants indicated that neither  
20 company has employees, plant or facilities in Arizona.

21 7. The Consumer Services Section of the Utilities Division reports that there have  
22 been no complaints, inquiries, or opinions filed against NetLojix or First Choice through  
23 December 1, 2010. Consumer Services also reports that, according to the Corporations Division,  
24 First Choice is in good standing with the Corporations Division of the Commission while NetLojix  
25 is not in good standing. NetLojix's authority to do business in Arizona was revoked on April 14,  
26 2010, for failure to file the Corporations Division 2009 and 2010 Annual Reports. According to  
27 the Compliance Section of the Utilities Division, there are no outstanding compliance items or  
28 issues that need to be addressed by NetLojix or First Choice.

1           8.     The Applicants filed a request for a waiver of Arizona Administrative Code  
2 ("A.A.C.") R14-2-1107(B) relative to publication of a legal notice based on the facts that there are  
3 no retail customers to notify in Arizona, NetLojix has no employees in Arizona, and no residents  
4 or businesses in any county of Arizona will be affected as a result of the transaction. Staff  
5 believes, under the circumstances mentioned above, that the notice requirements of A.A.C. R14-2-  
6 1107(B) should be waived.

7           9.     Since there are other carriers, including AT&T and MCI (now Verizon), in Arizona  
8 offering similar services as NetLojix, Staff believes that NetLojix's request to cancel its authority  
9 to provide resold long distance telecommunications service is in the public interest. Because  
10 NetLojix has no customers and has no authority to conduct business in Arizona, Staff believes the  
11 Commission should cancel NetLojix's CC&N to provide resold telecommunications services in  
12 Arizona.

13           10.    In accordance with A.A.C. R14-2-802, the Affiliated Interest Rules are applicable  
14 to all Class A investor-owned utilities under the jurisdiction of the Commission. In response to  
15 Staff's First Set of Data Requests, the Applicants provided confirmation that neither First Choice  
16 nor NetLojix are Class A investor-owned utilities. Therefore, since the Applicants do not meet the  
17 definition of Class A investor-owned utilities, Staff believes the Affiliated Interest Rules do not  
18 apply to this transaction.

19           11.    Staff has recommended that the Commission approve the Asset Purchase  
20 Agreement between NetLojix and First Choice. Staff has further recommended approval of the  
21 Applicants request to cancel NetLojix's CC&N to provide resold interexchange services in  
22 Arizona, effective upon a decision in this matter. In addition, Staff has recommended the  
23 cancellation of NetLojix's tariff that is currently on file with the Commission. Upon cancellation  
24 of its CC&N, NetLojix will no longer be authorized to provide resold interexchange  
25 telecommunications services in Arizona and therefore, will no longer be subject to the  
26 requirements of Decision No. 62629.

#### CONCLUSIONS OF LAW

27           1.     First Choice and NetLojix are public service corporations within the meaning of  
28 Article XV of the Arizona Constitution and A.R.S. §§40-281 and 40-282.

2. The Commission has jurisdiction over First Choice, NetLojix, and the subject matter in this filing under A.R.S. §40-285.

3. The Commission, having reviewed the filing and Staff's Memorandum dated December 23, 2010, concludes that it is in the public interest to approve the First Choice and NetLojix Application.

ORDER

IT IS THEREFORE ORDERED that the Application of First Choice Technology Inc. and NetLojix Telecom, Inc. for approval of an Asset Purchase Agreement whereby First Choice will acquire the assets of NetLojix in Arizona be and hereby is approved.

IT IS FURTHER ORDERED that the Application of NetLojix Telecom, Inc. to cancel its Certificate of Convenience and Necessity for resold interexchange long distance telecommunications services be and hereby is approved,.

IT IS FURTHER ORDERED that the cancellation of the Certificate of Convenience and Necessity held by NetLojix Telecom, Inc. shall be effective upon consummation of the transaction.

IT IS FURTHER ORDERED that the legal notice requirement of A.A.C. R14-2-1107(B), be and hereby is waived.

IT IS FURTHER ORDERED that upon cancellation of NetLojix Telecom, Inc's Certificate of Convenience and Necessity, NetLojix shall no longer be authorized to provide resold interexchange long distance telecommunications services in Arizona and therefore, shall no longer be subject to the requirements of Decision No. 62629.

IT IS FURTHER ORDERED that NetLojix Telecom, Inc's tariff on file with the Commission be and hereby is cancelled, effective upon consummation of the transaction.

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1 IT IS FURTHER ORDERED that First Choice Technology Inc. and NetLojix Telecom,  
2 Inc. provide notice through a filing in Docket Control to the Commission within 30 days following  
3 closure of the proposed transaction or a decision in this matter, whichever is later.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5  
6 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

7  
8 \_\_\_\_\_  
CHAIRMAN

COMMISSIONER

9  
10  
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12  
13 IN WITNESS WHEREOF, I ERNEST G. JOHNSON,  
14 Executive Director of the Arizona Corporation Commission,  
15 have hereunto, set my hand and caused the official seal of  
16 this Commission to be affixed at the Capitol, in the City of  
17 Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

18 \_\_\_\_\_  
19 ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

20  
21 DISSENT: \_\_\_\_\_

22 DISSENT: \_\_\_\_\_

23 SMO:PJG:lhM\MAS  
24  
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26  
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28



1 SERVICE LIST FOR: FIRST CHOICE TECHNOLOGY, INC.  
AND NETLOJIX TELECOM, INC.  
2 DOCKET NOS. T-20400A-08-0568 AND T-03807A-08-0568

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